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SOUTHERN DISTRICT OF CALIFORNIA

BY:

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DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JAMES W. KEENAN, et al.,

Plaintiffs-Appellants,

v.

ROSS M. PYLE, et al.,

Defendants-Respondents.

CASE NO. 07-CV-1090 W (LSP)

**ORDER (1) GRANTING [10]  
MOTION TO STRIKE  
OPENING BRIEF; (2)  
GRANTING [15] MOTION  
FOR LEAVE TO FILE  
AMENDED OPENING BRIEF;  
(3) SETTING BRIEFING  
SCHEDULE**

On June 13, 2007, Appellants James and Judy Kennan elected to have this court hear an appeal from the United States Bankruptcy Court. On August 27, 2007, the Keenans lodged their opening brief with the court. Respondents filed a motion to dismiss the appeal for failure to lodge a record on appeal or cite to it. Because the Keenans failed to lodge a record, but nevertheless have shown good cause for the failure, the court will **GRANT** the motion to strike and **GRANT** leave to file an amended opening brief.

1 Bankruptcy Rule 8010 establishes the guidelines for filing appellate briefs in  
 2 bankruptcy cases. Several subsections of the rule presuppose that an appellant must  
 3 have lodged a record on appeal. Bankr. R. 8010(d)–(e) (“There shall follow a  
 4 statement of the facts relevant to the issues presented for review, with appropriate  
 5 references to the record. . . . The argument shall contain the contentions of the  
 6 appellant with respect to the issues presented, and the reasons therefor, with citations  
 7 to parts of the record relied upon.”).

8 The Keenans admittedly failed to comply with this rule, however, they responded  
 9 with an affidavit explaining why the appellate record never appeared on the docket  
 10 until October 2. (Henein Decl. at 1–2.) Further, the Keenans filed a motion for leave  
 11 to file an amended opening brief. Respondents note that the Keenans never pledged  
 12 to comply with Rule 8010 and argue that further delay will prejudice the creditors and  
 13 the bankruptcy estate.

14 While the court does not, as a matter of course, waive procedural rules—even  
 15 for pro se litigants—it does favor resolving disputes on the merits. Further, nothing in  
 16 the Respondents’ reply suggests a further delay of one to two months will unduly  
 17 prejudice the creditors or the estate.

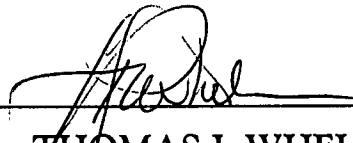
18 Therefore, the court hereby **ORDERS** as follows:

- 19 • The Appellants’ opening brief is due November 12, 2007. The court cautions
- 20 the Keenans to comply with all procedural rules.
- 21 • The Appellees’ response is due November 26, 2007.
- 22 • The Appellants’ reply is due December 3, 2007.

23 The court will take the briefs under submission and rule thereafter.

24 **IT IS SO ORDERED.**

25 Dated: October 22, 2007

  
 Hon. THOMAS J. WHELAN  
 United States District Court  
 Southern District of California